

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

**DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION  
TO EXTEND TIME TO FILE HIS ANSWERING BRIEF**

The Delaware Department of Justice, on behalf of defendants Sergeant Rodney Layfield and the Delaware State Police, opposes the motion of plaintiff Brian D. Neefe ("Neefe") for a seventeen-day extension of time to file an answering brief to the defendant's motion for summary judgment. In support of this opposition, the Department of Justice states as follows:

1. Defendants' counsel regrets having to trouble the Court with this matter and normally would have tried to agree with opposing counsel about such procedural matters, however, Neefe's request for a seventeen-day of extension of time directly impacts the mediation scheduled with Magistrate-Judge Thynge on September 19, 2005.

2. On May 18, 2005, this Court entered a Rule 16 Scheduling Order providing that "[a]ll case dispositive motions, if any, in support of the motion shall be served and filed on or before August 22, 2005. Briefing will be presented pursuant to the Local Court's Rules."

3. On August 22, 2005, the defendants electronically filed and served a motion for summary judgment and opening brief in support. Under the Local Rules, Neefe had until September 6, 2005 to file an answering brief.

4. Neefe did not file a timely answering brief, nor did he file a timely motion for an extension of time. *See Local Rule 16.5* (requests for extensions of deadlines "shall be made by motion or stipulation prior to expiration of the date deadline"). On September 7, 2005, Neefe filed a motion to extend the time to file his answering brief from September 6 until September 23, 2005. According to Neefe's counsel, he "was on vacation outside the State of Delaware and did not return to his office until September 6, 2005 and thus had no notification of the motion until that date."

5. Neefe's counsel has known since May 18, 2005 when this Court entered its Rule 16 Scheduling Order that defendants might file a dispositive motion on August 22, 2005. Indeed, in depositions in July 2005, Neefe's counsel indicated that he would need an extension of time to respond to the defendants' anticipated summary judgment motion because he would be on vacation the last week of August.

6. Neefe's motion fails to explain why he needs an additional seventeen days to respond to the State's summary judgment motion other than that he is busy "catching up." If this Court grants Neefe's motion, then Neefe will have until September 23, 2005 to file his answering brief. That briefing schedule will render the mediation with the Magistrate-Judge now scheduled for September 19, 2005 all but pointless. At the initial teleconference with Judge Thynge, the Court and the parties specifically chose that date because, under the Rule 16 Scheduling Order, the briefing on dispositive motions would have been completed by September 13, 2005.

7. The Court is aware how full the Judge Thynge's mediation calendar is, and it is

unlikely that the parties will be able to find an alternate mediation date before the three-day jury trial starts on November 29, 2005.

8. The defendants are amenable to a shorter extension of time for Neefe to file and serve his answering brief: until September 15, 2005. That will give defendants' counsel at least one business day to review the answering brief prior to the mediation scheduled for September 19, 2005.

WHEREFORE, defendants ask this Court to deny Neefe's motion for an extension of time or, in the alternative, to shorten the time requested and require Neefe to file and serve his answering brief no later than September 15, 2005.

Respectfully submitted,

/s/ W. Michael Tupman  
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Attorney for Defendants

Date: September 7, 2005

**CERTIFICATE OF SERVICE**

I hereby certify that on this 7<sup>th</sup> day of September, 2005, I served by electronic filing a copy of the Defendants' Opposition to Plaintiff's Motion To Extend Time To File His Answering Brief;

and that on September 9, 2005, I caused to be served by first-class U.S. mail, postage prepaid, two copies of that Opposition to:

Edward C. Gill, Esquire  
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P.O. Box 824  
Georgetown, DE 19947  
Counsel of Record for Plaintiff

/s/ W. Michael Tupman  
W. Michael Tupman

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